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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 JOHN LINDLAND,
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14 v.
15 TUSIMPLE, INC., et al.,
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Plaintiff,

Defendants.

Case No.: 3:21-cv-00417-RBM-MDD

**ORDER DENYING DEFENDANT
TUSIMPLE, INC.'S MOTION TO
EXCLUDE THE TESTIMONY OF
HORACIO VALEIRAS**

[Doc. 38]

On March 28, 2022, Defendant TuSimple, Inc. (“Defendant”) filed a motion to exclude the testimony of Plaintiff John Lindland’s (“Plaintiff”) expert witness Horacio Valeiras under Federal Rule of Evidence 702 (“Motion”). (Doc. 38 (hereinafter “Mot.”).) Plaintiff filed a brief in opposition to Defendant’s Motion on April 21, 2022 (Doc. 43 (hereinafter “Opp.”)), and Defendant filed its reply on April 28, 2022. (Doc. 46.) For the reasons discussed below, Defendant’s Motion is **DENIED**.

I. BACKGROUND

The Court recounted the factual and procedural background of this action in its orders on Defendant’s motion for order for choice of law determination (Doc. 31), Plaintiff’s motion to bifurcate (Doc. 40), and Plaintiff’s motion to exclude the testimony of Defendant’s expert Richard Holstrom (Doc. 59). The Court incorporates by reference

1 the background as set forth therein, and briefly states below those facts relevant to the
2 instant Motion.

3 Defendant “is a technology company that operates self-driving trucks and develops
4 commercial ready Level 4 (SAE) fully autonomous driving solution[s] for the logistics
5 industry.” (Doc. 1 (“Compl.”) ¶ 6.) Defendant hired Plaintiff on or about August 24, 2018,
6 as a Functional Safety Engineering Lead. (*Id.* ¶ 19.) Plaintiff was offered stock options
7 prior to accepting Defendant’s job offer, which were “to vest on a three-year cliff vesting
8 schedule in the amount of 30% after [Plaintiff’s] first year of employment, 30% after [his]
9 second year of employment, and 40% after [his] third year of employment.” (Doc. 23-1 ¶
10 4.) Plaintiff’s employment contract provides:

11 Upon approval by our Board of Directors, \$150,000 worth of share options, subject
12 to all required taxes and withholdings, will be granted to you with 3-year-cliff
13 vesting schedule as of commencement of your employment with TuSimple. The
14 number of share options offered will be calculated upon the then valuation of
15 TuSimple on the Valuation Date, i.e., six (6) months after the actual start date of
16 your employment.

17 (*Id.* Ex. A § 6.)

18 Plaintiff alleges Defendant terminated his employment on or around March 18, 2020
19 in order to avoid the payment of his stock options. (Compl. ¶¶ 49–50, 54.) In his
20 Complaint, Plaintiff seeks “the granting of the full 150,000 share options at the strike price
21 determined as per the employment contract” and a declaration “as to whether the share
22 options that have already been earned according to the employment contract are being
23 unreasonably withheld by Defendant TuSimple and should be vested immediately.” (*Id.*
24 at 23.) The parties’ experts have submitted reports which dispute the value of the vested
25 portion of Plaintiff’s stock options.

26 **II. LEGAL STANDARD**

27 Federal Rule of Evidence (“Rule”) 702 governs the admissibility of expert
28 testimony. Rule 702 provides:

1 A witness who is qualified as an expert by knowledge, skill, experience,
 2 training, or education may testify in the form of an opinion or otherwise if: (a)
 3 the expert's scientific, technical, or other specialized knowledge will help the
 4 trier of fact to understand the evidence or to determine a fact in issue; (b) the
 5 testimony is based on sufficient facts or data; (c) the testimony is the product
 of reliable principles and methods; and (d) the expert has reliably applied the
 principles and methods to the facts of the case.

6 FED. R. EVID. 702. "The party offering expert testimony has the burden of establishing its
 7 admissibility." *Bldg. Indus. Ass'n of Washington v. Washington State Bldg. Code Council*,
 8 683 F.3d 1144, 1154 (9th Cir. 2012).

9 Before finding expert testimony admissible, the trial court must make a "preliminary
 10 assessment of whether the reasoning or methodology underlying the testimony is
 11 scientifically valid and of whether that reasoning or methodology properly can be applied
 12 to the facts in issue." *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 592–93 (1993).
 13 "Under *Daubert*, the trial court must act as a 'gatekeeper' to exclude junk science that does
 14 not meet Federal Rule of Evidence 702's reliability standards by making a preliminary
 15 determination that the expert's testimony is reliable." *Ellis v. Costco Wholesale Corp.*, 657
 16 F.3d 970, 982 (9th Cir. 2011) (citing *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 145,
 17 147–49 (1999)).

18 The Court must find "that any and all scientific testimony or evidence admitted is
 19 not only relevant, but reliable." *Daubert*, 509 U.S. at 590. "Expert opinion testimony is
 20 relevant if the knowledge underlying it has a valid connection to the pertinent inquiry. And
 21 it is reliable if the knowledge underlying it has a reliable basis in the knowledge and
 22 experience of the relevant discipline." *Primiano v. Cook*, 598 F.3d 558, 565 (9th Cir.
 23 2010), *as amended* (Apr. 27, 2010). "[T]he court must assess [an expert's] reasoning or
 24 methodology, using as appropriate such criteria as testability, publication in peer reviewed
 25 literature, and general acceptance." *Alaska Rent-A-Car, Inc. v. Avis Budget Grp., Inc.*, 738
 26 F.3d 960, 969 (9th Cir. 2013) (quoting *Primiano*, 598 F.3d at 564). "Reliable expert
 27 testimony need only be relevant, and need not establish every element that the plaintiff
 28

1 must prove, in order to be admissible.” *Id.* (citing *Stilwell v. Smith & Nephew, Inc.*, 482
2 F.3d 1187, 1192 (9th Cir. 2007)).

3 The inquiry required by Rule 702 “is a flexible one.” *Daubert*, 509 U.S. at 594; *see*
4 *also City of Pomona v. SQM N. Am. Corp.*, 750 F.3d 1036, 1043 (9th Cir. 2014) (citing
5 *Alaska Rent-A-Car, Inc.*, 738 F.3d at 969). “In evaluating proffered expert testimony, the
6 trial court is ‘a gatekeeper, not a fact finder.’” *City of Pomona*, 750 F.3d at 1043 (quoting
7 *Primiano*, 598 F.3d at 565). “Challenges that go to the weight of the evidence are within
8 the province of a fact finder, not a trial court judge. A district court should not make
9 credibility determinations that are reserved for the jury.” *Id.* at 1044. “Shaky but
10 admissible evidence is to be attacked by cross examination, contrary evidence, and
11 attention to the burden of proof, not exclusion.” *Primiano*, 598 F.3d at 564 (citing *Daubert*,
12 509 U.S. at 596).

13 III. DISCUSSION

14 Plaintiff retained expert Horacio A. Valeiras and Frontier Global Partners, LLC “to
15 provide expert witness testimony with respect to alleged damages accruing from the
16 allegations of conversion and the amount and valuation of John L[i]ndland’s promised
17 TuSimple common stock options.” (Doc. 38-2 at 6.) Mr. Valeiras obtained and reviewed
18 documents in the case relevant to Plaintiff’s claimed economic loss, including, among other
19 things, Plaintiff’s employment offer letter and emails exchanged among Plaintiff and
20 certain of Defendants’ employees. (*Id.* at 13.) Mr. Valeiras submitted an initial expert
21 report on September 30, 2021 and a rebuttal expert report on October 29, 2021, responding
22 to the expert report submitted by Defendant’s retained expert, Richard Holstrom. (*See id.*)
23 Mr. Valeiras and Mr. Holstrom reach drastically different results regarding the value of
24 Plaintiff’s stock option shares.

25 Defendant does not seek to exclude Mr. Valeiras’s testimony in its entirety. (*See*
26 Doc. 46 at 1 (“The Motion is not a motion to exclude Mr. Valeiras’ opinions entirely.”).)
27 Rather, Defendant seeks only “to exclude the purported legal conclusion of Mr. Valeiras
28 that Plaintiff was granted ‘common’ stock options.” (Mot. at 2) (emphasis omitted).

1 Defendant argues that “[w]hether Plaintiff was granted common stock options or
2 nonstatutory options based on the language of the Employment Agreement is a legal
3 conclusion.” (*Id.*) (emphasis omitted). In his opposition, Plaintiff argues Mr. Valeiras’s
4 description of Plaintiff’s granted equity as “common stock options,” *see, e.g.*, Doc. 38-2 at
5 6, “is based on the plain language of the contract, supported by additional information
6 provided to him throughout the litigation process,” including Defendant’s 2017 Share Plan
7 and its S-1 Form filed with the U.S. Securities and Exchange Commission at the time of
8 the company’s initial public offering. (Opp. at 9–10.)

9 In evaluating a motion to exclude expert testimony, it is this Court’s role to “act as
10 a ‘gatekeeper’ to exclude junk science that does not meet Federal Rule of Evidence 702’s
11 reliability standards.” *Ellis*, 657 F.3d at 982. In the instant Motion, Defendant does not
12 argue that Mr. Valeiras is unqualified to serve as an expert or that his opinions regarding
13 the alleged value of Plaintiff’s economic damages are unreliable. Rather, Defendant argues
14 Mr. Valeiras’s use of the term “common” stock in calculating Plaintiff’s alleged damages
15 constitutes an improper legal conclusion reserved for the Court. While Defendant is correct
16 that an expert cannot provide a legal conclusion, *see Nationwide Transp. Fin. v. Cass Info.*
17 *Sys., Inc.*, 523 F.3d 1051, 1058 (9th Cir. 2008), Mr. Valeiras’s reports regarding the amount
18 of Plaintiff’s alleged economic damages do not constitute legal conclusions. Mr. Valeiras’s
19 opinions are based on his review of documents and his calculation of the alleged value of
20 Plaintiff’s share options. Additionally, in the company emails attached to Mr. Valeiras’s
21 report, Defendant’s employees themselves refer to the equity granted to Plaintiff as
22 common stock. (*See* Doc. 38-2 at 22 (“Options are the right to purchase a share of
23 TuSimple *common stock* at an exercise price under certain conditions, primarily based on
24 duration of employment.”) (emphasis added).) Because the Court finds Mr. Valeiras’s
25 reports both relevant and reliable (and because Defendant does not challenge the report on
26 either ground), the Court declines to exclude Mr. Valeiras’s testimony at this time, subject
27 to any renewed objection to Mr. Valeiras’s testimony at trial.

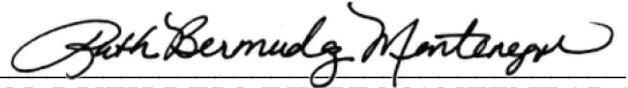
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1 IV. CONCLUSION

2 For the reasons discussed above, Defendant's motion (Doc. 38) is **DENIED**.

3 **IT IS SO ORDERED.**

4 DATE: October 24, 2022

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6 HON. RUTH BERMUDEZ MONTENEGRO
7 UNITED STATES DISTRICT JUDGE
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